IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15848 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LALJIBHAI BABUBHAI PARMAR

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 15848 of 2003

HL PATEL ADVOCATES for Petitioner No. 1

MS PAURAMI SHETH Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 19/02/2004

ORAL JUDGEMENT

1. Heard Mr.V.H.Patel, learned advocate for the petitioner and Ms.Paurami Sheth, learned AGP for the

respondents.

Ms. Paurami Sheth, learned AGP has placed on record the affidavit in reply on behalf of respondent no.1. Same is kept on record.

2. In this petition under Article 226 of the Constitution of India, the petitioner has been challenging the order of detention dated 4.8.2003 (Annexure-A) passed under Section 3 of the Gujarat Prevention of Anti-Social Activities Act,1985 (hereinafter referred to as "the PASA Act") by respondent no.1 and prays for quashing and setting aside the said detention order setting the petitioner at liberty.

3. The grounds of detention furnished to the petitioner are placed at Annexure-B. In the grounds of detention, it is alleged that the petitioner is a bootlegger indulging in the sale of foreign liquor illegally and because of such anti-social activities, people from good families are influenced which causes injury to the public health.

4. In the grounds of detention, it is also stated that 3 cases under the provisions of Bombay Prohibition Act have been referred to alleging that the petitioner -detenu was found to possess whisky of different make. That 4 unregistered cases were also referred to wherein the witnesses have stated about the sale of foreign liquor by the petitioner, also expressing apprehension to their life and property and also stating that because of the said apprehension, no complaint has been filed. In the grounds of detention, it is stated that the witnesses gave statements against the petitioner - detenu on condition that their identity be not disclosed for the reason of apprehension to their person and property.

5. Mr.Patel, referring to the grounds of detention and invocation of privilege under Section 9(2) of the PASA Act, contended that the privilege under Section 9(2) of the PASA Act for withholding the identity of the witnesses has not been claimed. It is further contended that requirement of Section 9(2) of the PASA Act is not complied with inasmuch as in the grounds of detention, it is not stated that the privilege under Section 9(2) of the PASA Act is invoked in public interest.

6. Perusal of the grounds of detention Annexure-B suggest that the witnesses gave the statements on condition that their names and addresses be withheld. Annexure-B does not refer to Section 9(2) of the PASA

Act. It is submitted by Ms.Paurami Sheth, learned AGP that not referring to Section 9(2) of the PASA Act specifically would not mean that privilege under Section 9(2) of the PASA Act is not claimed and the substance of the grounds of detention suggests that privilege under 9(2) of the PASA Act has been claimed.

7. The detention order does not say that the identity of the witnesses has been withheld as the apprehension to their person and property expressed by the witnesses is found to be true and correct, and it does not suggest from Annexure-A that privilege under Section 9(2) of the PASA Act is claimed. Apart from that, the Annexure-B, at the same time, does not suggest that the privilege under Section 9(2) of the PASA Act is exercised in the public interest.

In this regard, reliance has been placed on the decision in the case of Govind Madhu Kathiawari Vs. Commissioner of Police, 1992 (1) GLH 62 wherein the Division Bench of this Court has held that, "privilege exercised by the Detaining Authority in the present case under Section 9(2) of the PASA Act is not available to the Detaining Authority as the privilege exercised by the Detaining Authority is 'in the interest of public order' and 'not in public interest'. The phraseology of using words 'public order' instead of 'pubic interest' has vitiated the privilege order. The detaining authority has committed blunder in using words 'public order' instead of words 'public interest'. There was no requisite subjective satisfaction of the detaining authority for passing the impugned order under Section 9(1)."

8. It will be seen that in the instant case, Annexure-B does not refer to the words either 'public order' or 'public interest' and Annexure-B is absolutely salient so far as the privilege under Section 9(2) of the PASA Act having been exercised either in the interest of 'public order' or 'public interest'. Requirement of Subsection 2 of Section 9 of the PASA Act is that privilege of 9(2) can be exercised only in 'public interest'.

9. In the instant case, above requirement is not fulfilled and following the principle in the case of Govind Madhu Kathiawari (supra), the impugned detention order would be liable to quashed and set aside.

10. In the result, the petition is granted and accordingly allowed. The impugned order of detention

dated 4.8.2003 (Annexure-A) passed by respondent no.1 against the petitioner -detenu -Laljibhai Babubhai Parmar is hereby quashed and set aside. The petitioner detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(N.G.Nandi,J.)

(vipul)